

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1975

NO. **75-1449**

CELESTIA ELIZABETH WILLIAMS, Appellant

vs.

BOYCE DUANE WILLIAMS, Appellee

ON APPEAL FROM THE
SUPREME COURT OF OKLAHOMA

JURISDICTIONAL STATEMENT

JAMES R. HEAD
Attorney for Appellant
212 Beacon Building
Tulsa, Oklahoma 74103
(918) 584-4187

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JURISDICTIONAL STATEMENT

A. THE OPINION BELOW

The Decision of the Supreme Court of the State of Oklahoma is reported at 543 Pac. 2d, page 1401, and appears herein as Appendix A.

B. STATEMENT OF THE GROUNDS
ON WHICH THE JURISDICTION
OF THIS COURT IS INVOKED

(i) This is a divorce proceedings filed against the Appellant, CELESTIA ELIZABETH WILLIAMS. The Husband-Appellee, BOYCE DUANE WILLIAMS, filed a Petition for Divorce alleging as grounds therefor "incompatibility" under Title 12, Oklahoma Statutes, Section 1271.

In Appellant's Answer, and as her defense, she contested the right of the Court to grant a divorce on the grounds of "incompatibility" since it would contravene the religious beliefs of both parties.

(ii) The Judgment or Decree sought to be reviewed is the ruling of the Supreme Court of the State of Oklahoma dated December 2, 1975 affirming the decision of the Trial Court granting the divorce (R.22). Rehearing was denied on January 13, 1976. Notice of Appeal was filed March 2, 1976.

(iii) Jurisdiction of the Appeal is conferred on this Court by Title 28 USC 1257(2).

(iv) Cases believed to sustain the jurisdiction of this Court are:

Lovell v. City of Griffin, 303
U.S. 444 (1938)

Reynolds v. United States, 98
U.S. 145 (1878)

Davis v. Beasen, 133 U.S. 333
(1890)

Maynard v. Hill, 125 U.S. 190
(1888)

(v) The validity of Title 12 Oklahoma Statutes, Section 1271 "SEVENTH" is here involved. A partial text of that Section is as follows:

"§1271 GROUNDS FOR DIVORCE --
The District Court may grant a
divorce for any of the
following causes:

... Seventh.
Incompatibility. ..."

C. QUESTION PRESENTED
BY THE APPEAL

Where husband and wife testify and profess belief in God, in the Holy Bible, in Jesus Christ, and their religious belief is such that adultery is the only grounds for divorce, is the granting of a divorce for "incompatibility" contrary to the liberties granted under the First and Fourteenth Amendments to the Constitution of the United States?

An ancillary question is:

Does a State have the right to void a marriage contract for "incompatibility" where the professed religious beliefs of one (or both) of the parties allow only adultery as grounds for divorce?

D. STATEMENT OF THE FACTS
OF THE CASE

The parties were married on July 28, 1946 and have three grown children. On December 18, 1973 Appellee-Husband filed for divorce. The husband had petitioned the Court for divorce simply on the grounds of incompatibility (12 O.S. § 1271). The Defendant-Appellant-Wife, in her Answer, objected to the granting of such a divorce since both parties, members of the same Presbyterian Church, professed and testified as to their belief in God, in the Holy Bible, and in Jesus Christ, and the absence of adultery. The wife contended that the Court is without authority to grant a divorce on the grounds of incompatibility since such would contravene the religious oath and vows taken by each, i.e., the authority of God, the Bible, and Jesus Christ, to which both parties professed as their belief and would thus be contrary to the Preamble and the Perfect Toleration Clause of Article I, Section 2, of the Constitution of the State of Oklahoma, and also contrary to the Free Exercise Clause of the First Amendment to the Constitution of the United States. The

lower Court decree granting the divorce was filed July 24, 1974.

On appeal to the Supreme Court of the State of Oklahoma divorce was affirmed. In its decision of December 2, 1975 the Court was surprised at no precedents and then held:

"Freedom of religion, which is embodied in the First Amendment to the Constitution of the United States and in the Due Process Clause of the Fourteenth Amendment, reflects the philosophy that Church and State should be separate, and that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. (Cases cited)

"We are a civil court having Constitutional and Legislative sanction to administer man-made laws justly, fairly and equally. We have no jurisdiction to regulate or enforce scriptural obligations."

E. THE FEDERAL QUESTION
PRESENTED IS SUBSTANTIAL

This Appeal squarely raises the question as to whether the acts of the Legislature and the Courts in their

decision granting the divorce is a discriminatory prohibition of the free exercise of even one or both parties' professed Biblical religion.

The question is not the authority "to regulate or enforce scriptural obligation" but rather the authority of the Legislature and Courts under the First and Fourteenth Amendments to the Constitution of the United States to see that no man-made laws or courts interfere with or prohibit the free exercise of acknowledged spiritual obligations.

All of the cases that have come before the United States Supreme Court under the Religious Clause of the First Amendment have involved scriptural or religious doctrine.

The Court indirectly upheld religious obligations where, in the free exercise of their religion: children of the Amish religion were not compelled to attend public school as it would interfere with their legitimate religious belief. Wisconsin v. Yoder (1972) 406 US 205, 92 Sup. Ct. 1526; a Seventh Day Adventist was to have the benefit of unemployment compensation even though she could not work on Saturdays because of her religious beliefs. Sherbert v. Verner, 374 US 398, 83 Sup. Ct. 1790 (1963); "Jehovah's Witnesses" were allowed to distribute religious tracts as a part of their missionary evangelism. Murdock v. Commonwealth of Pa., 319 US 105 63 Sup. Ct. 870 (1943); and school

children whose religious beliefs collided with school rule requiring the flag salute could not be required to do so. W. Va. State Board of Education v. Barnett, 319 US 624, 63 Sup. Ct. 1178 (1943).

It is only where "religious" actions interfere with the promotion of health, safety, peace, order or general welfare that regulations by a state or federal government are usually upheld. See Gillette v. U.S. 401 US 437, 91 Sup. Ct. 828 (1971); Braunfield v. Browne, 366 U.S. 599, 81 Sup. Ct. 1144, (1961); Prince v. Mass. 321 US 158, 64 Sup. Ct. 438 (1944); Reynolds v. U.S. 98 US 145 (1879). Applying these principles to this case, it is difficult to concede how the upholding of a marriage based on professed beliefs of the parties will cause actions that will interfere with the health, safety, peace, order or general welfare of the State. To the contrary, a determination that where husband and wife - professed believers in God, the Bible, and Jesus Christ, sans adultery - cannot be divorced for incompatibility will uplift the health, safety, peace, order or general welfare of the state and nation and can be a step to prevent the promiscuous use of "non-fault" incompatibility statutes.

There are no known cases raising the issues herein.

Divorce and the increasing breakdown of family values is a plague which now more than ever affects every facet of American life - property, taxes, welfare, children. This Appeal raises an issue of fundamental public importance as to whether as between believing parties a decree of divorce for incompatibility can be a prohibition of the free exercise of religion under the First and Fourteenth Amendments guarantee. As presently advised, seven (7) states have as one grounds for divorce "incompatibility". Twenty-five (25) others include a type of "no fault" grounds. (See 8 Family Law Quarterly 421 and 422 (1974)). This grounds for divorce has provided an avenue for quick and easy separation of two parties promulgating untruths and providing an easy avenue for destruction of marriages, a basic tenet of civilization. Probable jurisdiction should, therefore, be noted.

Respectfully submitted,

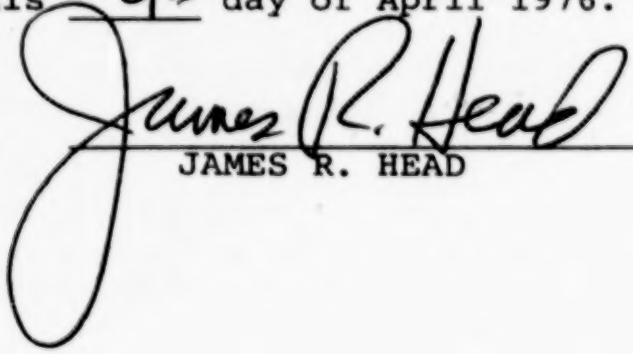

JAMES R. HEAD

Attorney for Appellant
212 Beacon Building
Tulsa, Oklahoma 74103
(918) 584-4187

DATED: April 1976

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned Attorney for Appellant, and a member of the Bar of the Supreme Court of the United States, served three (3) copies of the foregoing JURISDICTIONAL STATEMENT by deposit of same in a United States mail box, first class postage, prepaid, addressed to DAVID E. WINSLOW, ESQ., at 2221 East 25th Street, Tulsa, Oklahoma 74114, Counsel-of-Record for Appellee, this 9th day of April 1976.


JAMES R. HEAD

APPENDIX AIN THE SUPREME COURT OF THE STATE OF
OKLAHOMA

BOYCE DUANE WILLIAMS,)
 Appellee,)
 vs.) No. 47,741
)
CELESTIA ELIZABETH WILLIAMS,)
 Appellant.)

HODGES, V.C.J.

The sole issue on appeal is the authority of the district court to grant a divorce on the grounds of incompatibility. Appellant wife contends that the court is without such authority because it contravenes the religious oaths and vows taken by the parties, and, the authority of God, the Bible and Jesus Christ. Appellee husband does not refute these allegations or religious vows and belief but contends he is entitled to a divorce on the statutory grounds of incompatibility.

Surprisingly, we have no precedent, and the issue comes to us as a case of first impression.

A matrimonial ceremony may have two resulting aspects:

- (1) A civil contract between the parties granted by law.

- (2) An ecclesiastical obligation imposed by God as interpreted by the beliefs and conscience of the parties.

Appellant contends the civil contract of marriage cannot be dissolved by the State when it is in conflict with the ecclesiastical obligations of marriage of which both parties profess and proclaim. She argues, since both parties in this case believe that adultery is the only scriptural grounds for divorce, and neither has committed an act of adultery, the State must then recognize their ecclesiastical obligations and vows of marriage, and deny the appellee a divorce.

Appellant would have this Court to invoke the conscience of the appellee and apply their ecclesiastical beliefs on marriage and divorce. Under the constitutional mandate of separation of church and state, we decline. We have no business or right, constitutional or statutory, to interpret and enforce the ecclesiastical vows of marriage. While this court is concerned with the mores and religious beliefs of the citizenry, our jurisdiction extends only to the civil matters of state.

Freedom of religion, which is embodied in the First Amendment to the Constitution of the United States and in the due process clause of the Fourteenth Amendment, reflects the philosophy the

church and state should be separate, and that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Illinois ex rel McCollum v. Board of Education, 333 U.S. 203, 92 L.Ed 649, 68 S.Ct. 461, 2 A.L.R. 1388 (1946); Zorach v. Clauson, 343 U.S. 306, 96 L.Ed 954, 72 S. Ct. 679 (1952).

We are a civil court having constitutional and legislative sanction to administer man-made laws justly, fairly and equally. We have no jurisdiction to regulate or enforce scriptural obligations.

Title 43 O.S. 1971 § 1 states that:

"Marriage is a personal relation arising out of a civil contract to which the consent of parties legally competent of contracting and of entering into it is necessary, and the marriage relation shall only be entered into, maintained or abrogated as provided by law." (Emphasis supplied)

Divorce is wholly a creature of statute with absolute power to prescribe conditions relative thereto being vested in the State. Sosna v. State of Iowa, 360 F. Supp. 1182, 1184 (Iowa 1973). Affirmed 419 U.S. 393, 42 L.Ed 2d 532, 95 S. Ct. 553 (1975). Moore v. Moore, 101 Ariz. 40, 415 P.2d 568 (1966).

Neither the Constitution of the United States, nor the State of Oklahoma, prohibits the legislature from specifying upon what grounds, if any, divorces are to be granted. The State has a constitutional right to declare and maintain a policy in regard to marriage and divorce as to persons domiciled within its borders. The statutory grounds of divorce are exclusive, and the courts have authority in this field to do only that which is prescribed by the legislature. The legislature has vested the courts of this state with ultimate control over the dissolution of marriage. See Morganti v. Morganti, 99 Cal. App. 2d 512, 222 P.2d 78, 79 (1950); Crouch v. Crouch 28 Cal. App. 2d 243, 169 P.2d 897, 961 (1946). Logan v. Logan 396 P. 2d 198 (Wyo. 1964). Ashley v. Superior Court In and For County of Pierce, 82 Wash.2d 188, 509 P.2d 751, 757 (1973).

The law does not, nor can the courts, compel a husband and wife to live together. The remedy of absolute divorce is an extraordinary remedy for situations which are unavoidable and unendurable and which cannot be relieved by any proper and reasonable exertion of the party seeking the aid of the courts. Vincent v. Vincent, 208 Okla. 470, 257 P.2d 512 (1953). Although the State is a silent third party in every divorce proceeding, it is not interested in perpetrating a marriage after all possibility of accomplishing any desirable purpose of such relationship is gone.

Appellant's complaint that her constitutional right for the free exercise of religion is being violated is unfounded. The action of the trial court only dissolved the civil contract of marriage between the parties. No attempt was made to dissolve it ecclesiastically. Therefore, there is no infringement upon her constitutional right of freedom of religion. She still has her constitutional prerogative to believe that in the eyes of God, she and her estranged husband are ecclesiastically wedded as one, and may continue to exercise that freedom of religion according to her belief and conscience. Any transgression by her husband of their ecclesiastical vows, is, in this instance, outside the jurisdiction of the court.

It is not within the power of the church or an individual to affect the status or civil relations of persons. This may only be regulated by the supreme civil power. See *Reaves v. Reaves*, 15 Okla. 240, 82 P. 490, 494 (1905).

The State has absolute control over the dissolution of the civil marriage contract. Dissolution of the marital relationship or religious vows are a matter of conscience; extinguishment of the civil marriage contract and the marital status are matters of statutory construction.

The divorce was granted on the basis of incompatibility. Actionable incompatibility is determined to exist

when there is such a conflict of personalities as to destroy the legitimate ends of matrimony and the possibility of reconciliation. *Kirkland v. Kirkland*, 488 P.2d 1222, 1224 (Okla. 1971).

An action for divorce is one of equitable cognizance. The Supreme Court will not disturb the findings of divorce decree based on the determination of actionable incompatibility unless they are found to be clearly against the weight of the evidence, or constitute abuse of discretion. *Miller v. Miller*, 456 P.2d 902 (Okla. 1964).

We have carefully examined the pleadings, record, and transcript in this case and find in awarding a divorce to the husband on the basis of incompatibility, the decision of the trial court is supported by the weight of the evidence and that there was no abuse of discretion.

AFFIRMED.

ALL JUSTICES CONCUR.

APPENDIX B

IN THE SUPREME COURT OF THE STATE
OF OKLAHOMA

Tuesday, January 13, 1976

THE CLERK IS DIRECTED TO ISSUE
THE FOLLOWING ORDERS:

47,741 - Boyce Duane Williams v. Celestia
Elizabeth Williams. Rehearing
denied.

/s/ DENVER N. DAVISON
Chief Justice

APPENDIX C

IN THE SUPREME COURT FOR THE
STATE OF OKLAHOMA

BOYCE DUANE WILLIAMS,)	
Appellee,)	
)	
vs.)	NUMBER:
)	
CELESTIA ELIZABETH WILLIAMS,)	47,741
Appellant.)	

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE
UNITED STATES

NOTICE is hereby given that
CELESTIA ELIZABETH WILLIAMS, Appellant
above named, hereby appeals to the
Supreme Court of the United States from
the final judgment of the Supreme Court
of the State of Oklahoma entered in this
action on January 13, 1976.

This appeal is taken pursuant

to Title 28 USC 1257(2).

Respectfully submitted,

/s/ JAMES R. HEAD

Filed March 2, 1976